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Fees... * No Fees

Taxes...

Copies...

AMT PAID

RECORDING REQUESTED BY:

John M. Van Hooser
2907 Almaden Road
San Jose, California 95125

BRENDA DAVIS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
County Agency

RDE # 002

5/05/2083

9:47 AM

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Region 2
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, P.E. Chief
Northern California - Coastal Cleanup
Operations Branch

HAZARDOUS WASTE COVENANT TO RESTRICT USE OF PROPERTY

(Health and Safety Code §25355.5)

ENVIRONMENTAL RESTRICTION (Civil Code §1471(c))

**Assessor's Parcel #150-52-015 at 465 Sierra Vista Avenue, Mountain View,
Santa Clara County, California 94043**

This Covenant and Agreement ("Covenant") is made by and between John Van Hooser (the "Covenantor"), the owner of property (the "Property") situated in Mountain View, County of Santa Clara, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference, and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department and Covenantor has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the Property of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property totals approximately one acre (4840 square yards). The Property is located in the area now generally bounded by residential developments to the north and south, Sierra Vista Avenue to the west, and Permanente Creek to the east.

1.02. A limited portion of the Property, hereafter referred to as the "Capped Property" is more particularly described in Exhibit "B" as "area of excavated contaminated **soil.**" Exhibit "B" is attached and incorporated by this reference as defined below. As noted in

Exhibit 'B' the Capped Property is a portion of and located completely within the bounds of the Property as described in Exhibit 'A' as noted in paragraph 1.01 above.

1.03. The Covenantor has remediated the Property under the supervision and authority of the Department pursuant to a voluntary cleanup agreement that produced a Removal Action Workplan (RAW) pursuant to Chapter 6.8 of Division 20 of the H&SC. Because hazardous substances, **as** defined in H&SC §§ 25316 and 25260, (including chlordane, DDD, DDE, and DDT) remain in the soil and under portions of the Property, the Removal Action Workplan includes this deed restriction as part of the site remediation. In general, the remediation consists of a cap consisting **of** a base course of rock compacted to a thickness between nine and twelve inches and then covered with an asphaltic cover. A portion of the Capped Property will be used for landscaping, as depicted in Exhibit "C", attached hereto and incorporated by reference. In these areas the cap will consist of a geofabric covered with a minimum of two feet of clean soil. Operation and maintenance of the Cap will be managed per the requirements of the Department approved Operation and Maintenance Plan.

1.04. **As** described in a Risk Assessment conducted by the Department in 1992, several pesticides, including DDT, chlordane, beta-BHC, and delta-BHC, and dieldrin were detected in soil on and beneath the surface of **the** Property. Soil sampling results indicated the presence of total DDT with concentrations ranging from 9.2 to 27.77 parts per million (ppm) and chlordane concentrations ranging from 25 to 110 ppm. Risk estimates for inhalation and exposure from **soil** were performed primarily for chlordane and total DDT because of their greater volatility. Based upon the data, the cancer risk via inhalation pathways for a population of humans hypothetically living on the site with no remediation is 8.3×10^{-7} . The risk from exposure to chlordane and total **DDT** by soil ingestion and skin contact ranged from 22×10^{-4} to 23×10^{-5} . The Risk Assessment concluded that exposure to chlordane and total **DDT** via inhalation of vapors does not pose an unacceptable risk to human health. However, exposure to chlordane and total DDT via incidental **soil** ingestion and **dermal** contact may pose an unacceptable **risk** to human health. These results are based on the USEPA guidance range of 1×10^{-6} to 1×10^{-4} as an acceptable risk of carcinogenic effects. The risk assessment was used to establish cleanup levels as follows: 1.6 ppm for chlordane; 1.9 ppm for DDD; 1.3 ppm for DDE; 1.3 ppm for DDT; 0.071 ppm for alpha-BHC; 0.25 ppm for beta- and gamma-BHC; and 0.028 ppm for dieldrin. Soils above these levels have been excavated from the Property and consolidated beneath the Cap.

ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, John Van Hooser, his successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Capped Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction:

- (a) Runs with the land pursuant to H&SC § 25355.5(a)(1)(C) and Civil Code § 1471;
- (b) inures to the benefit of and passes with each and every portion of the Property;
- (c) is for the benefit of, and is enforceable by, the Department;
- (d) is imposed upon the entire Property unless expressly stated as applicable only to the Capped Property portion thereof; and
- (e) binds the Department, Owners and Occupants of the Property, and their respective heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees for the benefit of the Department and the Owners.

3.02. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, ~~the~~ owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Capped Property, as required by H&SC 925359.7.

3.03. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Capped Property.

3.04. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Capped Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV
RESTRICTIONS

4.01. Prohibited Uses. The Capped Property shall not be used for any of the following purpose:

- (a) A hospital for humans;
- (b) A public or private school for persons under 21 years of age;
- (c) A day care center for children;
- (d) A residence, including any mobile home or factory-built housing, constructed or installed for use as residential human habitation;
- (e) Raising of any food (including but not limited to, livestock, food crops);
- (9) Drilling for water, oil, or gas without prior written approval by the Department;

4.02 Non-Interference with Cap. Owner agrees:

- (a) Not to perform activities that may disturb or alter the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, mining, or landscaping) without prior review and approval by the Department;
- (b) All uses and development of the Capped Property shall preserve the integrity of the Cap;
- (c) It shall notify the Department of the type, cause, location and date of any material damage to or repair of the Cap. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.03 Soil Management.

- (a) No activities that will disturb the soil at or below two feet below grade, including but not limited to, excavation, grading, removal, trenching, filling, earth movement or mining, shall be allowed on the Capped Property without the Department's prior approval of both a Soil Management Plan and a Health and Safety Plan.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of State and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Capped Property.

4.04. Access for DeDartment. The Department and its designees shall have reasonable right of entry and access to the Capped Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.05. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the Operation and Maintenance Agreement shall have reasonable right of entry and access to the Capped Property for the purpose of implementing the Operation and Maintenance Agreement until the Department determines that no further Operation and Maintenance is required.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to materially comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Capped Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to bring or file enforcement actions as provided by law.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC Section 25233.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to

be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Santa Clara within ten (10) business days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective:
(1) when delivered, if personally delivered to the person being **served** or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: John Van Hooser
2907 Almaden Road
San Jose, California 95125

With copy to: Jon K. Wactor, Esq.
Wactor & Wick LLP
180 Grand Avenue, Suite 950
Oakland, CA 94612

To Department: Site Mitigation Branch Chief
Attn: CalWest/Sierra Vista Project Manager
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710

Any party may change its address or the individual to whose attention a Notice is to be sent **by** giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other **term** set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: John Van Hooser

By: John M Van Hooser
Title: 412-19-0' owner
Date: 3-19-03

Department of Toxic Substances Control

BY: Barbara
Title: Barbara J. Cook, Site Mitigation Branch Chief
Date: 4/29/2003

ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of ALAMEDA

} ss.

On 4/29/03
(DATE)

before me,

Frank Piscitelli
(NOTARY)

personally appeared

BARBARA JOAN COOK
SIGNER(S)

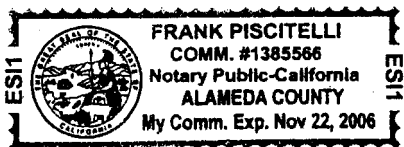


personally known to me

- OR -



proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Signature]
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

OTHER

STATE OF CALIFORNIA

COUNTY OF _____

Santa Clara

On this 19 day of March, in the year
2003

before me _____

Y. Sheffield

personally appeared

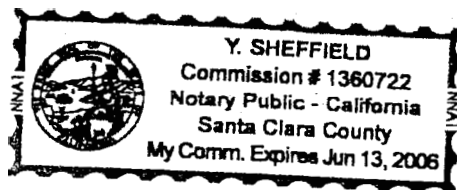
John Van Hooser

personally known to me (or proved to me on the basis of satisfactory evidence) to **be** the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

Y. Sheffield



LEGAL DESCRIPTION
FOR EXCAVATED CONTAMINATED SOIL AREA

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF MOUNTAIN VIEW, COUNTY OF SANTA CLARA AND STATE OF CALIFORNIA, BEING A PORTION OF TRACT NO. 7826 AS SHOWN ON THAT CERTAIN MAP RECORDED ON DECEMBER 16, 1985 IN BOOK 553 OF MAPS AT PAGES 31 AND 32, SANTA CLARA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINES OF SAN LUIS AVENUE AND SIERRA VISTA AVENUE AS SHOWN ON SAID MAP;

THENCE ALONG THE CENTERLINE OF SIERRA VISTA AVENUE NORTH 24°47'00" EAST, 555.65 FEET TO THE NORTHWESTERLY CORNER OF SAID TRACT NO. 7826;

THENCE LEAVING SAID CENTERLINE, ALONG THE NORTHEASTERLY LINE OF SAID TRACT NO. 7826, SOUTH 63°53'00" EAST, 30.01 FEET TO A POINT LYING 30.00 FEET DISTANT FROM AND PERPENDICULAR TO SAID CENTERLINE, SAID POINT LYING ON THE SOUTHEASTERLY RIGHT-OF-WAY OF SIERRA VISTA AVENUE. AND BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ON THE NORTHEASTERLY LINE OF TRACT NO. 7826, LEAVING SAID SOUTHEASTERLY RIGHT-OF-WAY, SOUTH 63°53'00" EAST, 270.63 FEET;

THENCE LEAVING SAID NORTHEASTERLY LINE OF TRACT NO. 7826, SOUTH 26°07'00" WEST, 52.33 FEET;

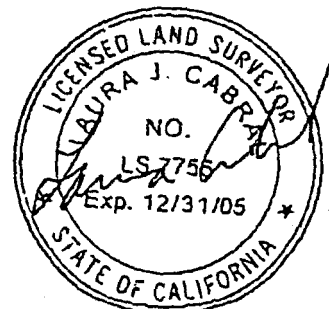
THENCE NORTH 63°53'00" WEST 225.26 FEET;

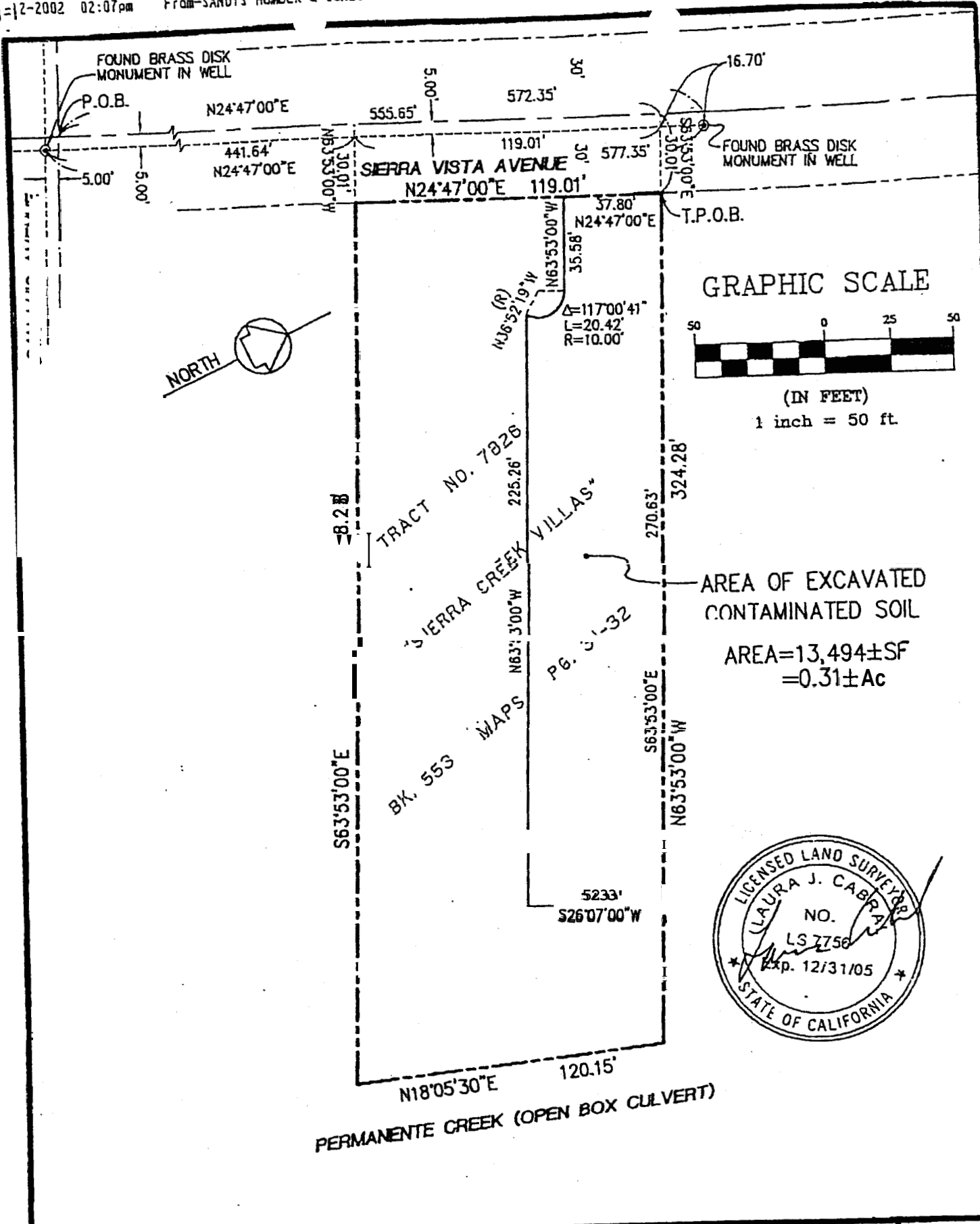
THENCE ALONG A NON-TANGENT CURVE TO THE LEFT, CONCAVE TO THE WEST, HAVING A RADIUS OF 10.00 FEET, THE RADIUS POINT OF WHICH BEARS NORTH 36°52'19" WEST. THROUGH A CENTRAL ANGLE OF 117°00'41", FOR A DISTANCE OF 20.42 FEET;

THENCE NORTH 63°53'00" WEST, 35.58 FEET TO A POINT ON THE SAID SOUTHEASTERLY RIGHT-OF-WAY OF SIERRA VISTA AVENUE, SAID POINT LYING 30.00 FEET DISTANT FROM AND PERPENDICULAR TO THE SAID CENTERLINE OF SIERRA VISTA AVENUE;

THENCE ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY, PARALLEL WITH SAID CENTERLINE NORTH 24°47'00" EAST, 37.80 FEET TO THE TRUE POINT OF BEGINNING.

DESCRIBED LAND CONTAINING A TOTAL AREA OF 13,494 SQUARE FEET MORE OR LESS.





603 Contra Street
Mountain View CA
94041-2008
Tel: 650 965-6900
Fax: 650 965-6472

SANDIS HUMBER JONES
CIVIL ENGINEERS SURVEYORS PLANNERS

DATE: 07/12/02
SCALE: 1"=50'
DRAWN BY: MHC
APPROVED BY: LIC
DRAWING NO.: 201166

PLAT OF
EXCAVATED CONTAMINATED
SOIL AREA
465 SIERRA VISTA AVENUE
MOUNTAIN VIEW CALIFORNIA

SHEET
2
of 2 SHEETS

07/12/02

201166